



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/155701

PRELIMINARY RECITALS

Pursuant to a petition filed February 24, 2014, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Racine County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on March 25, 2014, at Racine, Wisconsin.

The issue for determination is whether the agency correctly calculated petitioner's income in determining her FS allotment.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Rhonda Kramer

Racine County Department of Human Services
1717 Taylor Ave
Racine, WI 53403-2497

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Racine County and a recipient of FS.
2. Petitioner owns a business, [REDACTED], located at [REDACTED]. She filed her taxes for that business in 2012 using a U.S. Income Tax Return for an S Corporation. See Exhibit 1.

3. Petitioner owns the property located at [REDACTED] and her business pays her the rent to use the space. Petitioner filed her taxes in 2012 for that Supplemental Income (rent) using a Schedule E.
4. On December 5, 2013 the agency issued a notice of decision to petitioner indicating that her FS would be \$27/month based off her income of \$347.08 from self-employment (rental property) and \$651 from Social Security.
5. Petitioner does not actively manage the rental property 20 hours per week or more.

DISCUSSION

The petitioner contests the agency's determination of the amount of her FS for December and ongoing. Specifically, she asserts that the agency budgeted too much income from the petitioner's rental property. The agency budgeted rental income of \$347.08. The agency's representative at hearing indicated that the rental income was considered unearned income because petitioner does not actively manage the rental property 20 hours per week or more. I address that issue first.

One of the items that an FS agency must determine is a participant's income. Participation in the FS Program is limited to those food units whose income is determined to be a substantial limiting factor in permitting them to obtain a more nutritious diet. Income is considered any gain or benefit that can be used to purchase goods and services. *FoodShare Handbook*, §4.3.1; 7 CFR 273.9(a). According to the FS policy, rental income is earned if the owner actively manages the property on an average of 20 or more hours a week, and unearned income if the person manages the property less than 20 hours a week. *FoodShare Handbook*, §4.3.3.4; 7 CFR 273.9(b)(1)(ii). At hearing, Petitioner was asked to estimate the number of hours she actively manages the property. The information she testified to did not credibly show that she actively manages the rental property on average 20 or more hours per week. Thus, the rental income should be considered unearned income.

FS policy states that if the rental property income is considered unearned income, the "net rent" is the total rent payment(s) received minus the total mortgage payment (principal and interest) and other verified operational costs such as (but not limited to) hazard insurance, mortgage insurance, and taxes. *FoodShare Handbook*, §4.3.4.2. The federal regulations provide further limited instruction for treatment of self-employment income:

Sec. 273.11 Action on households with special circumstances.

(a) *Self-employment income*. The State agency must calculate a household's self-employment income as follows:

(1) *Averaging self-employment income*. (i) Self-employment income must be averaged over the period the income is intended to cover, even if the household receives income from other sources. If the averaged amount does not accurately reflect the household's actual circumstances because the household has experienced a substantial increase or decrease in business, the State agency must calculate the self-employment income on the basis of anticipated, not prior, earnings.

...

(2) *Determining monthly income from self-employment*. (i) For the period of time over which self-employment income is determined, the State agency must add all gross self-employment income (either actual or anticipated, as provided in paragraph (a)(1)(i) of this section) and capital gains (according to paragraph (a)(3) of this section), exclude the costs of producing the self-employment income (as determined in

paragraph (a)(4) of this section), and divide the remaining amount of self-employment income by the number of months over which the income will be averaged. This amount is the monthly net self-employment income. The monthly net self-employment income must be added to any other earned income received by the household to determine total monthly earned income.

(ii) If the cost of producing self-employment income exceeds the income derived from self-employment as a farmer (defined...), such losses must be prorated in accordance with paragraph (a)(1) of this section, and then offset against countable income to the household as follows:

(A) Offset farm self-employment losses first against other self-employment income. ...

...

(b) *Allowable costs of producing self-employment income.* (1)

Allowable costs of producing self-employment income include, but are not limited to, the identifiable costs of labor; stock; raw material; seed and fertilizer; payments on the principal of the purchase price of income-producing real estate and capital assets, equipment, machinery, and other durable goods; interest paid to purchase income-producing property; insurance premiums; and taxes paid on income-producing property.

(2) In determining net self-employment income, the following items are not allowable costs of doing business:

- (i) Net losses from previous periods;
- (ii) Federal, State, and local income taxes, money set aside for retirement purposes, and other work-related personal expenses (such as transportation to and from work), as these expenses are accounted for by the 20 percent earned income deduction specified in Sec. 273.9(d)(2);
- (iii) Depreciation; and
- (iv) Any amount that exceeds the payment a household receives from a boarder for lodging and meals.

...

7 C.F.R. § 273.11(a),(b).

The agency explained its calculations and provided the worksheets to show how it determined the income. Petitioner argues that the rental payments she receives are not income because she uses that money to pay the mortgage on the business property and thus she never actually has that money as income. She provided some documentation from her bank to show this. As cited above in the policy and federal regulation, payments on the principal of the purchase price of the income-producing real estate are allowable deductions/costs. I do not find that the agency gave the petitioner the credit for the mortgage payment. Therefore, I will remand the matter to the agency so that it can redetermine petitioner's FS effective December 1, 2013 accordingly. Because the agency may need verifications beyond that received in the hearing, I am allowing 20 days for the redetermination.

CONCLUSIONS OF LAW

The agency incorrectly calculated petitioner's income in determining her FS allotment effective December 1, 2013.

THEREFORE, it is**ORDERED**

That the matter is remanded to the agency to (1) redetermine petitioner's FS effective December 1, 2013 to current, (2) issue any FS accordingly, and (3) issue a notice of decision regarding same. These actions shall be taken within 20 days of the date of this decision.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 22nd day of April, 2014

\sKelly Cochrane
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on April 22, 2014.

Racine County Department of Human Services
Division of Health Care Access and Accountability